World Bank Administrative Tribunal

2013

Decision No. 477

L.T. Mpoy-Kamulayi (No. 7),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

World Bank Administrative Tribunal
Office of the Executive Secretary

L.T. Mpoy-Kamulayi (No. 7),
Applicant

v.

International Bank for Reconstruction and Development,
Respondent

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Florentino P. Feliciano (Vice-President), Mónica Pinto (Vice-President), Jan Paulsson, Ahmed El-Kosheri, Andrew Burgess and Abdul G. Koroma.

2. This Application, the Applicant's seventh before the Tribunal, was received on 19 October 2012. The Applicant was represented by Stephen C. Schott of Schott Johnson, LLP. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration), Legal Vice Presidency.

3. The Applicant challenges the February 2012 decision of the Acting Chief Ethics Officer to refuse to investigate his allegations of misconduct.

FACTUAL BACKGROUND

4. The Applicant joined the Bank as Counsel in 1984 and worked in the Bank's Legal Vice Presidency until his retirement in 2012. At the time of his retirement he held the title of Lead Counsel (level GH).

5. In this Application, the Applicant frames the decision that he is challenging as follows:

> The decision by the Acting Chief Ethics Officer to refuse to investigate misconduct committed by Mr. David Rivero (in collusion with other staff members of the Respondent) in discharging his professional duties while standing as Counsel for the Respondent in proceedings undertaken by Applicant against the Respondent before the Appeals Committee, the Peer Review Services and the World Bank Administrative Tribunal.

6. The Applicant explains that he pursued certain claims against the Bank in "Appeals No. 1506 and No. 1507, in Peer Reviews No. 5 and No. 9 and in the World Bank Administrative Tribunal Applications and the related Decisions No. 449 and No. [457]." He states that during these proceedings, Mr. Rivero willfully made false statements in collusion with other staff members of the Bank and some witnesses appearing for the Bank committed perjury. He claims that he asked the Acting Chief Ethics Officer to investigate but she refused and so informed him on 8 February 2012. This decision of the Acting Chief Ethics Officer is now being challenged by the Applicant in this Application.

7. *Appeal No. 1506 and Tribunal Decision No. 463*. In Appeal No. 1506 filed on 30 June 2009, the Applicant challenged "the Bank's decision not to recommend an *ad hoc* salary increase." In its Report of 1 December 2010, Peer Review Services ("PRS") rejected the Applicant's claims and recommended that his request for relief be denied. The Applicant then filed an Application with the Tribunal on 11 July 2011, which resulted in Decision No. 463. In this judgment, issued on 27 June 2012, the Tribunal *inter alia* ordered the Bank to undertake a review of the Applicant's salary and awarded him attorneys' fees in the amount of $20,000.

8. The Applicant claims in the current Application that during the proceedings in Appeal No. 1506 and Decision No. 463, the Bank *inter alia* had misrepresented facts relating to his performance and also "misrepresented facts in its recital of the sequence of events that led Applicant to request the review of his salary."

9. *Appeal No. 1507 and Tribunal Decision No. 449*. In Appeal No. 1507 filed on 30 June 2009, the Applicant challenged the Bank's decisions: "(i) not to reimburse [the Applicant] for expenses he incurred on assignment to the Resident Mission in Abuja, Nigeria, including hotel expenses for the period from October 24, 2008 to December 16, 2008; and (ii) not to 'provide [the Applicant] with all other items of equipment he is entitled to under Staff Rule 6.17 … .'" In its Report of 15 January 2010, PRS rejected most of the Applicant's claims. He then filed an Application with the Tribunal on 7 July 2010, which led to Decision No. 449, issued on 25 May 2011, in which the Tribunal dismissed the Applicant's claims.

10. The Applicant claims in the current Application that during the proceedings in Appeal No. 1507 and Decision No. 449, the Bank "coached or instructed" a witness for the Bank to "lie about an offer of a housing unit in the Bank's compound in Abuja," and that the Bank committed perjury and provided false statements regarding payment of his mobility premium, his excess baggage allowance and the cost of certain Bank property.

11. *Request for Review No. 5 and Tribunal Decision No. 462*. In PRS Request for Review No. 5 filed on 20 November 2009, the Applicant challenged "his 2009 Salary Review Increase rating and corresponding increase ("2009 SRI")." In its Report of 10 November 2010, PRS rejected the Applicant's claims and recommended that his request for relief be denied. He then filed an Application with the Tribunal on 7 July 2011, which led to Decision No. 462. In this judgment issued on 27 June 2012, the Tribunal upheld certain claims of the Applicant and ordered the Bank to pay compensation in the amount of three months' salary and attorneys' fees in the amount of $34,949.

12. The Applicant claims in the current Application that during the proceedings in Request for Review No. 5 and Decision No. 462, the Bank "introduced into proceedings sworn testimony from [a staff member] that [the Bank] knew full well to be false" and the Bank "introduced deliberately into proceedings hostile feedback against the Applicant that [the Bank] knew full well not to be related" to the proceedings.

13. *Request for Review No. 9 and Tribunal Decision No. 457*. In Request for Review No. 9 filed on 4 December 2009, the Applicant challenged the Bank's decision to recall him from his assignment in Abuja, Nigeria, and to reassign him to another position. In its Report of 21 July 2010, PRS rejected his claims and recommended the denial of any relief. He filed an Application with the Tribunal on 4 March 2010 resulting in Decision No. 457. In this judgment issued on 11 October 2011, the Tribunal dismissed his claims.

14. The Applicant claims in the current Application that during the proceedings in Request for Review No. 9 and Decision No. 457, the Bank "refused deliberately to share with the Applicant and with the Tribunal crucial documentary evidence pertaining to the case, namely,

the so-called Scott White Report [Complaint by T. Mpoy-Kamulayi Alleging Professional Harassment and Bullying, prepared by Scott B. White, Deputy General Counsel, Corporate Affairs]." The Applicant also claims that the Bank "misrepresented purposefully and willingly before the Tribunal the amount of monies it had withheld from Applicant's salary before and after [the Bank] had recalled Applicant."

15. In essence, the Applicant believes that during the above proceedings before PRS and the Tribunal, the Bank, in particular, Mr. Rivero, made false statements and certain witnesses for the Bank committed perjury. In February 2012 he requested that the Bank's Office of Ethics and Business Conduct ("EBC") to "investigate the violations of the Bank's Principles of Staff Employment, staff rules and ethical rules committed by Mr. Rivero et al in the handling of all the cases filed by Applicant under the Bank's internal justice system."

16. EBC declined to investigate and the Acting Chief Ethics Officer so informed the Applicant on 8 February 2012. In her e-mail message to the Applicant, she wrote:

> Thank you for coming to the Office of Ethics & Business Conduct (EBC). You have raised two allegations of potential misconduct by World Bank staff in connection with your OPE and in the context of an Administrative Tribunal proceeding.
>
> In this regard, our office has assessed whether the allegations that you have raised fall under Staff Rule 3.00 and therefore under our mandate. We have determined that the allegations that you have raised fall outside of the scope of our review and we therefore refer you to Peer Review Services in connection with the first matter discussed below and to the World Bank Administrative Tribunal in connection with the second matter discussed below.
>
> 1. With regard to the OPE matter the appropriate forum for seeking redress relating to allegations that your OPE was improperly conducted is Peer Review Services. Because of deadlines by which such matters must be raised, we urge you to contact this office as soon as possible in order to preserve your rights. …
>
> 2. Your allegations regarding possible misconduct in the course of an Administrative Tribunal proceeding are similarly outside the scope of our office because such issues are properly determined by the Administrative Tribunal.

> In adversarial proceedings parties will often dispute statements made by adverse parties or by third party witnesses. It is precisely because the parties have fundamental disagreements over events that recourse to the Administrative Tribunal is necessary. The Tribunal's Rules and procedures afford each party multiple opportunities to present its own evidence and to refute the statements made by the opposing party. You therefore had opportunity to dispute before the Tribunal judges any statements made by the Bank's witnesses or lawyer. If, in fact, you discovered after the Tribunal Decision that the testimony of Bank witnesses or lawyer(s) misrepresented certain facts, it would be in that forum that you should raise your concerns.
>
> Under Article XI, Section 1, of the Tribunal's Statute, the Tribunal's "Judgments shall be final and without appeal." Parties should not subsequently raise in a different forum the same issues that were before the Administrative Tribunal and thereby circumvent Article XI, Section 1 by impugning the integrity of other litigants. To allow this to occur would undermine the Tribunal process itself. Consequently, if you wish to pursue you concern that a willful misrepresentation of any fact was perpetrated by either Bank witnesses or lawyer(s) in the course of your Administrative Tribunal proceeding, you must do so by presenting your allegation to the Tribunal. …
>
> Having given this matter careful thought and in light of the considerations outlined above, EBC will not review this matter.

17. The Applicant filed a Request for Review before PRS (No. 97) on 6 June 2012 challenging the decision of EBC to refuse to conduct an investigation of his complaint related to "repeated willful misrepresentation of facts relating to: (i) [his] performance and salary review increases by [his] managers;" and (ii) "false statements made by staff representing the Bank throughout the handling of grievances [he] submitted to PRS and the Bank's Administrative Tribunal."

18. By a memorandum of 18 June 2012, PRS informed the Applicant that it would not review the Applicant's claims because it lacked jurisdiction to review requests concerning "actions, inactions, or decisions taken in connection with staff member misconduct investigations."

19. On 19 October 2012, the Applicant filed the current Application. As remedies, he seeks the following: (i) compensation to recover expenses incurred before PRS and Tribunal proceedings; (ii) "[a]ppointment by the Tribunal of an independent investigator acceptable to Applicant … to conduct a full and complete investigation of misconduct … committed by Mr. David Rivero in collusion with other staff members … in connection with all the proceedings undertaken by Applicant"; (iii) moral damages; and (iv) "legal costs."

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's contentions

20. The Applicant contends that Mr. David Rivero and other staff members who appeared in the proceedings in PRS and before the Tribunal are bound by the Bank's Principles of Staff Employment, Staff Rules, and Bank's Code of Conduct. He argues that they violated these rules during the proceedings. They must be held accountable.

21. The Applicant adds that under Staff Rule 3.00, EBC had a duty to investigate promptly and effectively when the Applicant provided it with properly motivated and factually supported allegations of misconduct. EBC breached its duty in this case.

22. The Applicant contends that the Bank justifies its action stating that EBC based its decision on the premise "that it may not investigate into the Tribunal's prior cases." The Applicant adds that: "This is a red herring. The Applicant never asked EBC to investigate into the Tribunal's prior cases." He argues that the issue is the unwillingness of EBC to investigate a serious complaint that involves senior management.

The Bank's contentions

23. The Bank answers that EBC's decision in 2012 was reasonable and correct. It explains that EBC does not blindly begin investigating presumptively innocent staff members merely upon a complaint from another staff member. The Bank argues that EBC carefully considered the Applicant's accusations against his colleagues, and made a reasonable decision that they do

not fall within EBC's mandate, and that, while disappointing to the Applicant, this decision did not violate the terms and conditions of his employment.

24. The Bank contends that in order to investigate the Applicant's assertions, EBC would have to investigate the record of the Tribunal, the Appeals Committee and PRS proceedings, and that the Applicant cannot simply present his prior complaints to EBC and demand that EBC re-open issues considered in Tribunal proceedings. The Bank adds that this appellate function is not EBC's charge, and that it would undermine the Tribunal's role if EBC had jurisdiction to investigate the conduct of the parties and witnesses before the Tribunal. Moreover, in these proceedings, the Bank adds, the Applicant had ample opportunity to expose any perceived falsehood by the Bank's Counsel or witnesses.

25. Finally, the Bank contends that the finality of the Tribunal's decisions means that they may not be continually second-guessed by parties. If the Applicant's current claims are given a forum here, there will be no finality.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

26. Article XI of the Tribunal's Statute provides that: "Judgments shall be final and without appeal." In *van Gent (No. 2)*, Decision No. 13 [1983], para. 21, the Tribunal held that:

> Article XI lays down the general principle of the finality of all judgments of the Tribunal. It explicitly stipulates that judgments shall be "final and without appeal." No party to a dispute before the Tribunal may, therefore, bring his case back to the Tribunal for a second round of litigation, no matter how dissatisfied he may be with the pronouncement of the Tribunal or its considerations. The Tribunal's judgment is meant to be the last step along the path of settling disputes arising between the Bank and the members of its staff.

27. This rule of finality of the Tribunal's judgments is essential to the operation of the Bank's internal justice system. Once the Tribunal has spoken, that must end the matter; no one must be allowed to look back to search for grounds for further litigation.

28. The Statute provides a sole exception to this principle of finality. Article XIII provides that:

> A party to a case in which a judgment has been delivered may, in the event of the discovery of a fact which by its nature might have had a decisive influence on the judgment of the Tribunal and which at the time the judgment was delivered was unknown both to the Tribunal and to that party, request the Tribunal, within a period of six months after that party acquired knowledge of such fact, to revise the judgment.

29. The Tribunal has stated in a number of its judgments that "the powers of revision of a judgment are strictly limited and may be exercised only upon compliance with the conditions set forth in Article XIII." *Skandera*, Decision No. 9 [1982], para. 7. In *Kwakwa (No. 2)*, Decision No. 350 [2006], para. 19, the Tribunal emphasized that:

> To ensure that Article XIII does not wreak havoc with the rule of finality, enshrined in Article XI, the former must be recognized as available only in exceptional circumstances. The "new fact" must shake the very foundations of the [T]ribunal's persuasion; "if we had known that," the judges must say, "we might have reached the opposite result.

30. The Applicant's current Application must be viewed in light these fundamental statutory rules of the Tribunal and its related jurisprudence.

31. In essence, the Applicant asserts that Mr. Rivero and certain witnesses appearing for the Bank provided false statements or committed perjury during the Tribunal proceedings leading to Decision Nos. 449 [2011], 457 [2011], 462 [2012] and 463 [2012].

32. These complaints of the Applicant are anything but new. On 12 December 2011, the Applicant filed an Application seeking a revision of Decision No. 449 [2011] based on similar complaints. The Tribunal summarized the basis for the Applicant's 12 December Application for revision as follows:

> In his Application, the Applicant claims that the Tribunal was misled by three "false statements" made by the Bank in its pleadings before the Tribunal which improperly influenced its judgment in [Decision No. 449]. First, the Applicant claims that the Bank's assertions that he received "mobility allowances" related to his posting in Nigeria while he was resident in Washington, DC were false.

> Second, the Applicant argues that he did not receive an "excess baggage allowance" which the Bank claimed it paid in connection with his relocation to Abuja, Nigeria. Third, the Applicant argues that he did not receive a rental subsidy from May 2008 to 9 October 2008, and that the rental subsidy he did receive accounted for 66 per cent of his rent, not 85 per cent as asserted by the Bank.

33. In an Order issued on 27 June 2012, the Tribunal summarily dismissed the Application of 12 December. *See Mpoy-Kamulayi (No. 6)*, Order No. 2012-2 [2012]. The Tribunal observed in the Order at paragraph 7 that:

> The Tribunal notes that the parties were aware of the Applicant's concerns regarding these alleged "false statements" at the time the judgment was delivered. It recalls that the Applicant requested, and was granted leave, to submit a Supplemental Statement in which he sought to draw the attention of the Tribunal to certain alleged "false statements" contained in the Bank's Rejoinder. In so doing, the Applicant disputed the Bank's assertions about the benefits he received for his relocation to Abuja. The Tribunal was therefore apprised of, and had taken into account, the Applicant's position on these matters at the time the judgment was delivered.

34. Again on 27 December 2012, the Applicant filed an Application for revision of Decision No. 457 [2011] based on similar types of complaints. The Tribunal noted the basis for the 27 December Application as follows:

> The Application is based on documents received by the Applicant in June 2012 in the course of the proceedings which culminated in the Tribunal's judgment in *L.T. Mpoy-Kamulayi (No. 4)*, Decision No. 468 [2012]. The Applicant principally contends, first, that a September 2009 report entitled "Complaint by T. Mpoy-Kamulayi Alleging Professional Harassment and Bullying," prepared by the then Deputy General Counsel (Corporate Affairs), shows "indisputably that critical facts behind Applicant's recall from Abuja were his complaints about [the Chief Counsel's] management."

35. In an Order issued on 13 February 2013, the Tribunal summarily dismissed the Application of 27 December as devoid of all merit. *See Mpoy-Kamulayi* (No. 9), Order No. 2013-3 [2013].

36. With respect to Decision Nos. 449 and 457, it is evident that the complaints in the current Application are not new and the Applicant's attempt to revise them has already been rejected. With respect to Decision Nos. 462 and 463, he is not raising new complaints. The Applicant raised complaints similar to those raised in the current Application during the proceedings in Decision Nos. 462 and 463. In explaining the scope of finality of judgments, the Administrative Tribunal of the International Labour Organization stated in Judgment No. 3058 [2012], at para. 5, that: "It is a fundamental principle that a person cannot, in separate proceedings, challenge a judgment to which he was a party by raising issues that could have been raised in the earlier proceedings." The record is clear that the Applicant raised these complaints during the proceedings leading to the judgments in question.

37. The current Application and the other applications for revision of judgments as discussed above suggest that the Applicant is attempting to circumvent the finality of the Tribunal's judgments. He tried to do so by taking the exceptional road of Article XIII. His applications were summarily dismissed. He is now attempting a different road. He is asking EBC to second-guess the Tribunal's deliberations and judgments. Invoking Article XI of the Tribunal's Statute, EBC rightly rejected the Applicant's attempt. The Applicant has no basis to challenge the finality of the Tribunal's judgments.

DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Olufemi Elias
Olufemi Elias
Executive Secretary

At Washington, D.C., 3 October 2013